

AFFIDAVIT

1. I, Jay S. Walker, am considered an expert in Direct Marketing. In 1999 I was the recipient of the Direct Marketer of the Year award from Direct Marketing Business Intelligence (a leading Direct Marketing publication) and named Direct Marketer of the Year by Target Marketing Magazine. Also in 1999, I was named one of the Marketers of the Year by Brandweek Magazine. During the period of 1992 – 1997, I served as co-founder and marketing leader for NewSub Services™, subsequently renamed Synapse Group™, the world's largest marketer of magazine subscriptions (subsequently sold to AOL Time Warner™ for \$600 million). During that time my company produced more than two billion pieces of direct mail and created a customer base of twenty-five million active buyers. Prior to that I served as director of new product development at Folio™ magazine (recognized as the leading magazine in magazine management since 1972, devoted to features on industry news, trends and newsmakers, as well as the latest technologies influencing the industry of magazine marketing).

2. Based on my personal knowledge, at least until March 11, 1999, the field of e-mail mailing lists and the field of postal mailing lists have been considered distinct and unrelated fields in the art of direct marketing.

3. Based on my personal knowledge, at least prior to March 11, 1999, in the direct marketing industry it was not known or even considered to build or use mailing lists that included both a postal mailing address and an e-mail address for all, or even a majority, of mailing list members. At best, some mailing lists may have included both a postal mailing address and an e-mail address for some members, without any consistency or

reliability that both such pieces of information would be present for even a significant number of members of a mailing list.

4. Based on my personal knowledge, at least prior to March 11, 1999, in the direct marketing industry, it was not known to pre-test a postal mailing list by using e-mail in any way.

5. Based on my personal knowledge, at least prior to March 11, 1999, in the direct marketing industry, a business contemplating the purchase or rental of a postal mailing list had no means of pre-testing in any manner a plurality of available postal mailing lists to determine which would be the most effective.

5. Based on my personal knowledge, at least prior to March 11, 1999, a selection of a postal mailing list would, at best, be based on members' responses to prior postal mailings. Such prior postal mailings had typically occurred some time before the currently planned postal mailing and were not necessarily related to the currently planned postal mailing.

I, Jay S. Walker, understand that willful false statements made by me in this affidavit are punishable by fine or imprisonment, or both, and may jeopardize the validity of the application or any patent issuing thereon. All statements made herein that are based on my own knowledge are true. All statements made herein that are based on information and belief are believed to be true.



Jay S. Walker

September 10, 2003